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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,408	10/01/2003	Takaaki Takenaka	5095-4070	8877
27123	7590	10/18/2007	EXAMINER	
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101			JOHNSON, MATTHEW A	
			ART UNIT	PAPER NUMBER
			3682	
			NOTIFICATION DATE	DELIVERY MODE
			10/18/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/677,408

Applicant(s)

TAKENAKA, TAKAAKI

Examiner

Matthew Johnson

Art Unit

3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5 and 9-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 6-8 and 13-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/1/03 & 3/30/04

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 3, 5 and 9-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/12/2007.

Claim Objections

2. Claims 4 and 6 are objected to because of the following informalities: the phrase "at least one of surfaces" is grammatically awkward. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4, 6-8 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4 and 6 recites the limitation "at least one of surfaces" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 recites the limitation "the surface" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Re clm 17: The phrase "hypothetical longitudinal centerline" is vague and indefinite. Is there a longitudinal centerline or not? The examiner suggests omitting the term "hypothetical".

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 6, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Ross (USP-2,968,967).

Re clm 1: Ross discloses an accelerator pedal (17) for an industrial vehicle comprising:

- A main pedal (49a, 23a)
- A selector pedal (21a) pivotally supported (24a) on the main pedal
- A selector pedal body (211)
- A forward step (213) provided on the selector pedal body
- A reverse step (215) provided on the selector pedal body in parallel with the forward step
- Wherein at least one of the forward and reverse steps is mounded from the selector pedal body (Fig. 7)

Re clm 6: Ross discloses at least one of the surfaces of the forward and reverse steps provides a protruberance (Fig. 7).

Re clm 17: Ross discloses the selector pedal has a hypothetical longitudinal centerline, the forward and reverse steps being symmetrically arranged relative to the hypothetical centerline (along 24a, Fig. 7).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross (USP-2,968,967) in view of Hildebrecht (USP-4,250,768).

Re clm 4: Ross discloses all of the claim limitations as described above.

Ross does not disclose at least one of the forward and reverse steps increases its height from a middle of the selector pedal toward a periphery of the selector pedal.

Hildebrecht teaches a selector pedal (120 and 114) that increases its height from a middle of the selector pedal toward a periphery of the selector pedal for the purpose of providing a reference on the pedal recognizable by the sense of feel to the human foot so that the operator will be able to sense when his foot is engaging the main pedal or the selector pedal (C3 L10-18).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Ross to have at least one of the forward and reverse steps that increases its height from a middle of the selector pedal toward a periphery of the selector pedal, as taught by Hildebrecht for the purpose of providing a reference on the pedal recognizable by the sense of feel to the human foot so that the operator will be able to sense when his foot is engaging the main pedal or the selector pedal (C3 L10-18).

Re clm 7: Ross discloses all of the claim limitations as described above.

Ross does not disclose the surface of the protruberance increases its height from an inside of the selector pedal toward an outside of the selector pedal.

Hildebrecht teaches a selector pedal (120 and 114) having a surface (115 and 113) of a protruberance (Fig. 4) that increases its height from an inside of the selector pedal toward an outside of the selector pedal for the purpose of providing a reference on the pedal recognizable by the sense of feel to the human foot so that the operator will be able to sense when his foot is engaging the main pedal or the selector pedal (C3 L10-18).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the device of Ross to have the surface of the protruberance increasing its height from an inside of the selector pedal toward an outside of the selector pedal, as taught by Hildebrecht, for the purpose of providing a reference on the pedal recognizable by the sense of feel to the human foot so that the

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operator will be able to sense when his foot is engaging the main pedal or the selector pedal (C3 L10-18).

9. Claims 2, 8 and 13-16 rejected under 35 U.S.C. 103(a) as being unpatentable over Ross (USP-2,968,967) in view of Wiblin (USP-4,558,194).

Re clms 2 and 8: Ross discloses all of the claim limitations as described above.

Ross does not disclose the protruberance is constituted of a plurality of protrusions.

Wiblin teaches a selector pedal (40) having a protruberance (Fig. 6) constituted of a plurality of protrusions (51,55) for the purpose of providing contact portions and a stop portion to limit the displacement of the switchable members and prevent damage (C4 L3-15 and L31-43).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the device of Ross so that the protruberance is constituted by a plurality of protrusions, as taught by Wilbin, for the purpose of providing contact portions and a stop portion to limit the displacement of the switchable members and prevent damage (C4 L3-15 and L31-43).

Re clms 13 and 14: Wiblin further discloses the protruberance (Fig. 6) is made from an elastic material consisting of rubber (C3 L35-42).

Re clms 15 and 16: Ross discloses all of the claim limitations as described above.

While Ross does indeed disclose the selector pedal (21a) has an elastomer cover piece (211), Ross does not explicitly disclose at least one of the forward and reverse steps is made of elastic material consisting of resin or rubber.

Wiblin teaches a forward and reverse step (42 and 44) made of an elastic material consisting of rubber for the purpose of providing a flexible resilient contact area that is durable, rugged and inexpensive (C1 L61-63).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the device of Ross to have at least one of the forward and reverse steps made from an elastic material consisting of rubber, as taught by Wiblin, for the purpose of providing a flexible resilient contact area that is durable, rugged and inexpensive (C1 L61-63).

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew Johnson whose telephone number is 571-272-7944. The examiner can normally be reached on Monday - Friday 8:30a.m. - 5:00p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJ

MJ 10/11/2007



RICHARD RIDLEY
SUPERVISORY PATENT EXAMINER